

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
Mitchell Communications, Inc.)
Licensee of AM Radio Station WDVA,)
Danville, Virginia)

File Number EB-02-NF-039
NAL/Acct.No. 200232640003
FRN: 0007-0270-63

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: June 10, 2002

By the Enforcement Bureau, Norfolk Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture, we find that Mitchell Communications, Inc., (“Mitchell”), licensee of AM Broadcast Station WDVA, Danville, Virginia, willfully and repeatedly violated Section 17.4(a) of the Commission’s Rules (“Rules”),¹ and willfully violated Section 73.49 of the Rules² by failing to register its antenna structures and by failing to enclose its antenna towers within an effective locked fence or other enclosure. We conclude that Mitchell is apparently liable for forfeiture in the amount of thirteen thousand dollars (\$13,000).

II. BACKGROUND

2. On August 8, 2000, an agent of the Commission’s Norfolk Resident Agent Office (“Norfolk Office”) determined that Mitchell failed to register its four antenna structures used as part of AM radio station WDVA, Danville, Virginia. This violation resulted in a \$3,000 forfeiture against Mitchell for willful violation of Section 17.4(a) of the Rules, which Mitchell paid in full.³

3. On March 26, 2002, in response to a complaint, an agent of the Norfolk Office inspected AM radio station WDVA, Danville, Virginia, and Mitchell’s four antenna structures used as part of radio station WDVA. The agent determined that the four antenna structures were still not registered with the Commission. The agent questioned the station owner, C. G. Hairston, about the tower registration, to which Mr. Hairston responded that the towers were not registered and that he had hired someone to register the towers. The agent also observed that the fencing at the base of all four antenna towers was unlocked. The agent informed Mr. Hairston about the unlocked fencing, and Mr. Hairston provided no explanation.

¹ 47 C.F.R. § 17.4(a).

² 47 C.F.R. § 73.49.

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200132640003 (Enf. Bur., Norfolk Office, released March 20, 2001). Mitchell paid the forfeiture in full on August 8, 2001.

4. On May 3, 2002, a search of the FCC Antenna Structure Registration database determined that Mitchell's antenna structures remained unregistered.

III. DISCUSSION

5. Section 17.4(a) of the Rules requires that the owners of existing antenna structures that require notice of proposed construction to the Federal Aviation Administration ("FAA") must register the structure with the Commission. Mitchell's antenna structures required registration with the Commission because, due to the height of the structures, they require notification of proposed construction to the FAA. From August 8, 2000 to at least May 3, 2002, Mitchell failed to register its four antenna structures used as part of AM radio station WDVA.

6. Section 73.49 of the Rules requires that antenna towers having radio frequency potential at the base be enclosed within effective locked fences or other enclosure. On March 26, 2002, the fences surrounding all four of Mitchell's antenna towers for AM radio station WDVA were found unlocked.

7. Based on evidence before us, we find that Mitchell willfully⁴ and repeatedly⁵ violated Section 17.4(a) of the Rules by failing to register its antenna structures, and willfully violated Section 73.49 of the Rules by failing to enclose its antenna towers within an effective locked fence or other enclosure.

8. Pursuant to Section 1.80(b)(4) of the Commission's Rules, the base forfeiture amount for failing to register antenna structures is \$3,000 (failure to file required forms or information), and for failing to enclose its antenna towers within an effective locked fence or other enclosure is \$7,000.⁶ Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act") requires us to take into account, "... the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require."⁷ Mitchell's repeated failure to register its antenna structures warrants an upward adjustment of the \$3,000 base forfeiture amount for that violation to \$6,000. Considering the entire record and applying the statutory factors listed above, this case warrants a \$13,000 forfeiture.

IV. ORDERING CLAUSES

⁴Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies equally to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means that conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of the Act..." . See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁵Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which applies to Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

⁶ 47 C.F.R. § 1.80(b)(4).

⁷ 47 U.S.C. § 503 (b)(2)(D).

9. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁸ and Sections 0.111, 0.311 and 1.80 Rules,⁹ Mitchell is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of thirteen thousand dollars (\$13,000) for willful and repeated violation of Section 17.4(a) of the Rules, and willful violation of Section 73.49 of the Rules.

10. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Mitchell SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications, P. O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FRN and NAL Acct. No. referenced in the letterhead above.

12. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and MUST INCLUDE THE NAL/Acct. No. and FRN referenced in the letterhead above.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Federal Communications Commission, Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁰

15. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Mitchell Communications, Inc., at 130 Lexington Avenue, Danville, Virginia 24541. An additional copy shall be sent to Mitchell Communications, Inc., at One Radio LN, Danville, Virginia 24541.

FEDERAL COMMUNICATIONS COMMISSION

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. §§ 0.11, 0.311, 1.80.

¹⁰ See 47 C.F.R. § 1.1914.

Luther Bolden
Resident Agent